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CLASSIFICATION: ☐ ~~CONFIDENTIAL~~ ☐ ~~SECRET~~

☐ Change in Class. ☐

☐ Declassified

Class. Changed To: TS S ☐

Auth: HR 70-2

Date: 28 Nov 1978 By: ☐

JAN 12 1954

5-2927

MEMORANDUM FOR: Director of Central Intelligence

THROUGH : Deputy Director (Plans)  
Acting Deputy Director (Administration)

SUBJECT : Mr. ☐

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OGC REVIEW  
COMPLETED

1. The attached report contains the conclusions and recommendations of the Chief, Inspection and Review, Deputy Director (Plans), on the defalcations and errors committed by Mr. ☐ while engaged in the conduct of covert operations in this Agency.

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2. In accordance with the first recommendation, we have reviewed this report at length. While we do not necessarily agree with all the conclusions of the Inspection and Review Staff, we regard this as an excellent investigative performance. Based on the facts stated and the supporting exhibits, we are of the opinion that prima facie cases are established in several instances of violation of various criminal statutes, particularly those relating to false, fictitious, and fraudulent claims against the Government, embezzlement of Government funds, failure to account for public funds, misuse of funds, and false and fraudulent entries generally. (18 U.S.C., Secs. 287, 495, 641, 643, 653, 1001.)

3. While all possible defenses cannot be foreseen, we believe that prosecution in at least certain items would be successful, particularly in view of certain admissions made by ☐ In no case, however, can we concoct a plan for prosecution which does not involve classified information relating to covert operations. Certainly such information would be involved in any defense. We are, therefore, presented with a dilemma which has been commented on from time to time by the courts, one of which is cited below:

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In his opinion, Judge Hand stated at page 506, "While we must accept it as lawful for a department of the Government to suppress documents even when they will help determine controversies between third persons, we cannot agree that this should include their suppression in a criminal prosecution, founded

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Security Information

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upon those very dealings to which the documents relate, and whose criminality they will, or may, tend to exculpate. So far as they directly touch the criminal dealing, the prosecution necessarily ends any confidential character the documents may possess; it must be conducted in the open, and will lay bare their subject matter. The Government must choose either it must leave the transactions in the obscurity from where a trial will draw them, or it must expose them fully." (U.S. v. Andolscheck, 142 Fed. 2nd 503, C.C.A. 2nd., 1944)

4. The question of whether the information can be released is one for the Central Intelligence Agency, but the question of the effect of a refusal to disclose on the possibilities of prosecution is one for the Attorney General to determine. I, therefore, believe that the only proper course is to take the whole case to the Attorney General with the determination by the Director of Central Intelligence that all information relating to [ ] activities for this Agency and to the operations with which they were concerned is classified security information relating to the national defense and can, under no circumstances, be publicly disclosed and to request the Attorney General to advise us if any action can be taken which will not require disclosure of such information. I recommend that the General Counsel be authorized to approach the Department of Justice on this basis.

5. This action, if taken, need not interfere with any appropriate action called for in the other recommendations of the Chief, Inspection and Review, in his memorandum of 29 May 1953.

/S/

LAWRENCE R. HOUSTON  
General Counsel

1 Att - Report on subject

OGC:LRH:jeb

CC: DCI (2)

DD/P

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OBC IG

APPROVED DATE

SIGNED

(about 2/19/54)

ALLEN W. DULLES  
Director

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STATINTL

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